

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte DAVID W. PEHRSON SR. and MICHAEL P. ROMANOWSKY

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Appeal No. 94-2912  
Application 07/752,831<sup>1</sup>

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ON BRIEF

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Before WINTERS, SOFOCLEOUS and GRON, Administrative Patent Judges

GRON, Administrative Patent Judge.

DECISION ON APPEAL UNDER 35 U.S.C. § 134

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<sup>1</sup> Application for patent filed August 30, 1991.  
According  
to applicants, this application is a continuation-in-part of  
Application 07/407,813, filed September 13, 1989, now  
abandoned.

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This is an appeal from an examiner's rejection of Claims 1, 23, 31-33 and 39-41, all claims pending in this application. Claims 1, 23, 31-33 and 39-41 stand rejected under 35 U.S.C.

§ 103 as being unpatentable in view of the combined teachings of Packman, U.S. Patent 4,945,084, issued July 31, 1990, from an application filed July 8, 1987; Lazaridis et al.

(Lazaridis), U.S. Patent 4,990,610, issued February 5, 1991, from an application filed December 16, 1988; Bristol et al.

(Bristol), U.S. Patent 4,361,567, issued November 30, 1982; Mitsuhashi

et al. (Mitsuhashi), U.S. Patent 4,812,444, issued March 14, 1989; and The Merck Index, Ninth Edition, Merck & Co., Inc., Compound Nos. 1832, 4675, 7360, and 8283, pages 23, 630, 985, 1103 and 1104, (1976).

Claims 1 and 23 are representative of the subject matter claimed and read:

1. A method of treating a patient suffering from an aphthous ulcer, the method comprising administering  
to said patient a topical preparation containing sucralfate as an essential ingredient, wherein:
  - (a) the sucralfate is admixed with an aqueous carboxypolymethylene medium containing polysorbate 80 and simethicone, said medium

being added to said sucralfate in an amount  
sufficient to form a paste;

- (b) the mixture is allowed to dry; and
- (c) the resulting material is dispersed in an  
aqueous methylcellulose medium;

and wherein said preparation is topically applied  
to said aphthous ulcer in an amount sufficient to  
cover said aphthous ulcer.

23. A process of preparing a pharmaceutical preparation  
for treatment of an aphthous ulcer, the process  
comprising:

- (a) triturating sucralfate powder with an aqueous  
mixture of carboxypolymethylene, polysorbate-80  
and simethicone to form a substantially  
homogenous mixture, said aqueous mixture being  
added to said sucralfate in an amount  
sufficient to form a paste;
- (b) allowing said substantially homogenous mixture  
to dry into a gelatinous material; and
- (c) mixing said gelatinous material with an aqueous  
methylcellulose medium to form a preparation for  
topical application to said aphthous ulcer.

We have reviewed appellants' specification for everything  
that it teaches persons having ordinary skill in the art. We  
have considered appellants' examples and all of the claims.  
We have studied the combined teachings of the prior art cited  
and applied against appellants' claims. We have reviewed the  
Declaration of David W. Pehrson, filed December 3, 1992,

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Appellants' Brief on Appeal, and the Examiner's Answer.

Having considered and weighed all the evidence of record favoring patentability and all evidence to the contrary, we conclude that the inventions appellants claim are patentable over the cited prior art and reverse the examiner's rejection of all pending claims under 35 U.S.C. § 103.

In our view, the examiner's rejection of Claims 1, 23, 31-33 and 39-41 for obviousness under 35 U.S.C. § 103 results from an impermissible hindsight reconstruction of the claimed invention. See In re Gorman, 933 F.2d 982, 987, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991):

It is impermissible . . . simply to engage in a hindsight reconstruction of the claimed invention, using the applicant's [invention] . . . as a template and selecting elements from references to fill the gaps.

Whether or not we agree with appellants or the examiner that the specification's examples and the Declaration of David W. Pehrson show unexpected results for the full scope of the subject matter claimed, is immaterial. We hold that the examiner has not established a prima facie case of obviousness for the subject matter claimed in view of the combined prior

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art teachings of record. Moreover, the arguments presented in Appellants' Brief on Appeal are basically sound. We agree that the poor water-solubility of sucralfate undermines whatever minimal incentive the cited prior art would have provided a person having ordinary

skill in the art to make and use sucralfate in association with the two particular aqueous media employed in the claimed invention.

REVERSED

Sherman D. Winters )  
Administrative Patent Judge )  
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PATENT	Michael Sofocleous	)	
		)	BOARD OF
	Administrative Patent Judge	)	APPEALS AND
		)	INTERFERENCES
		)	
	Teddy S. Gron	)	
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